IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13 .04.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE V.DHANAPALAN

W.A. NO. 3090 OF 2002

1. The Syndicate of the
Manonmaniam Sundaranar
University, rep. by its
Chairman, Tirunelveli - 9.

2. The Inspection Commission
appointed by the Manonmaniam
Sundaranar University, rep. by
its Chairman, C/o. Registrar
Manonmaniam Sundaranar University
Tirunelveli - 9. .. Appellant

- Vs -

1. Sri Kumaraguru Swamigal
Arts College
Arulnandhinagar, Sri Vaikundam
V.O.C. District, rep. by its
Correspondent, Prof. P.Velappapillai

2. Government of Tamil Nadu
rep. by its Secretary
Education Department
Fort St. George, Madras - 9.

3. The Commissioner of Collegiate
Education, College Road
Madras - 6. .. Respondents

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Writ Appeal filed against the order passed by the learned single Judge in W.P. No.7378/95 dated 17th July, 2002, calling for the records relating to the order of the 4th respondent dated 13.8.1993 and the consequential resolution to the 3rd respondent dated 25.10.1993 and quash the same and delcare that the prosectuion thereby launched against the petitoner by the 1st respondent through the 2nd respondent under Section 3 of the Tamil Nadu Educational Institutions [Prohibition and Capitation fee] Act T.N.Act 57/1992 as null and illegal.

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For Appellants : Mr. N.G.R.Prasad, for
M/s. Row & Reddy

For Respondents : Mr. K.Doraiswamy, SC, for
Mr. K.Ravichandra Babu for R-1
Mr. V.Arun, GA for RR-2 & 3

JUDGMENT

S.J.MUKHOPADHAYA, J.

This writ appeal has been preferred by Manonmaniam Sundaranar University (hereinafter referred to as 'University') against judgment dated 17th July, 2002, passed in W.P. No.7378/95 whereby and whereunder the Resolution of the University, No.22 dated 25th Oct., 1993 and the report submitted by the 4th respondent, dated 13th Aug., 1993, were set aside and the writ petition was allowed in favour of the respondent/writ petitioner, Sri Kumaraguru Swamigal Arts College (hereinafter referred to as 'College').

2. The questions involved in this appeal are :-
i) Whether it is open to the University to enquire into the matter of the College through a Commission or Committee ?
ii) Whether the University could take any penal action against its affiliated college, including the college in question, if found collecting capitation fee.

3. For determination of the aforesaid issues, it is necessary to discuss the relevant facts, as mentioned hereunder :-

The college in question was established by Sri Kasi Mutt, which was granted a declaration by the Court of Sub Judge, Kumbakonam, that it is a religious denomination within the meaning of Article 26 of the Constitution of India. Later on, a question arose whether the college can claim status of a minority institution under Article 30 of the Constitution of India. A Division Bench of this Court, by its judgment reported in AIR 1997 Madras 386 (Manonmaniam Sundaranar University & Ors. - Vs - Kumaragurubara Swamigal Arts College & Ors.) while held that the University cannot be permitted to raise question of nullity of a civil court degree, further observed that a reading of the judgment of the first appellate court in A.S. No.62/86 shows that a right has been claimed by the head of the Kasi Mutt, both under Article 26 and under Article 30 of the Constitution of India, which were considered by both the first and appellate court and thus the matter stand decided.

4. The college in question was established in the year 1961 and was earlier affiliated with Madras University. Initially it was curbed out of Madras University and placed under the jurisdiction of Madurai Kamaraj University. Later on, again the area was curbed out and the college was placed under Manonmaniam Sundaranar University (University in question).

5. The University received certain complaints that the college is charging capitation fee at the time of admission. To enquire into the matter, three member commission (Committee) was appointed including former

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Registrar, Alagappa University, Karaikudi and two Syndicate members. After due inspection of the college, the Committee submitted its report dated 13th Aug., 1993. It appears that similar complaint was received with regard to some other affiliated colleges also. Those colleges were also inspected and reports were submitted. Having noticed such report, the Syndicate passed Resolution No.22 on 25th Oct., 1993, relevant portion of which is quoted hereunder :-

> "RESOLVED on the basis of reports of Inspection Commissions, to request the Government of Tamil Nadu to initiate prosecution against the managements of the following six colleges under the provisions of Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992 (Act 57 of 1992).
>
> 1. Scott Christian College, Nagercoil
> 2. Women's Christian College, Nagercoil
> 3. Nesamony Memorial Christian College, Marthandam
> 4. Sri Kumara Gurupara Swamigal Arts College, Srivaikuntam
> 5. Vivekananda College, Agasteeswaran
> 6. Muslim Arts college, Thiruvithancode
>
> RESOLVED FURTHER THAT no Ph.D. centre be recognised in the above colleges and no further affiliation be given to them till they stop making unauthorised collections. They are to be severely warned that further action is contemplated if the practice continues."

6. The Syndicate in its subsequent meeting held on 15th Dec., 1993, resolved not to consider the applications received from the colleges as shown in the resolution, including the college in question for further affiliation of course for the year 1994-95.

7. The college challenged both the report of the Commission (Committee) dated 13th Aug., 1993 and the Resolution No.22 dated 25th Oct., 1993 in a writ petition, W.P. No.7378/95. Learned single Judge, by impugned judgment dated 17th July, 2002, noticed a judgment passed by learned single Judge of this Court in Arumugam Pillai Seethai Ammal College, etc. - Vs - Registrar, Madurai Kamaraj University, reported in 1996 WLR 143 and held that the issue being covered by aforesaid decision, the University had no jurisdiction to appoint a Commission or to recommend the State Government to take action under the Capitation Fee Act, 1992. Both the report of Commission and the Resolution were set aside.

8. Section 4 of the Capitation Fee Act, 1992, empowers the Government to regulate tution fee or any other fee or deposit that may be received or collected by any educational institution or class or class of such educational institutions in respect of any or all class or classes of students. Sub-section (2) to Section 4 prohibits educational institutions from receiving or collecting any fee or to accept deposit in excess of the amount as may be notified by the Government. Under sub-section (3) to Section 4, every educational institution is to issue an official receipt for deposit or fee collected by it. While Section 7 prescribes penalty, Section 11 deals with congizance of offence as per which no Court can take cognizance of any offence under the said Act except with the sanction of the Government or such officer as may be authorised in this behalf.

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9. The relevant provisions of Capitation Fee Act, 1992, fell for consideration before a learned single Judge of this Court in Arumugam (supra) wherein taking into consideration the different provisions of the said Act and the Madurai Kamaraj University Act (Act XXXIII of 1965), learned single Judge held that the Capitation Fee Act is a self-contained code, which overrides all other law so far as they are inconsistent (Section 12 of the said Act) and as Section 11 prohibits even taking congizance of any offence by any Court except with the previous sanction of the State Government or such officer as the Government may authorise, the University had no jurisdiction and authority either under the Madurai Kamaraj University Act governing it or other law to appoint a commission to enquire into the allegation made against the college, i.e., the writ petitioner of the said case relating to collection of capitation fee.

10. In fact, the aforesaid judgment has been relied on by the learned single Judge to grant relief in favour of the college in question.

11. In this case, we are not raising any doubt relating to the correctness of the decision in Arumugam (supra), though we may have some reservation, as we are not deciding the case of any affiliated college of Madurai Kamaraj University, who are guided by a different Act. We are concerned with the Act and the Statute, which is binding on the college in question, namely, Manonmaniam Sundaranar University Act, 1990 (hereinafter referred to as 'Act, 1990') and Statute framed thereunder, namely, 'The Statute of Manonmaniam Sundaranar University' (hereinafter referred to as 'Statute').

12. Section 24 of Act, 1990 deals with power of a Syndicate, including the power to prescribe conditions for affiliation of colleges or to withdraw affiliation from colleges, to prescribe fee, inspection of colleges and delegation of its power to a Committee, etc., relevant provisions of which are quoted hereunder :-

> "24. (a) The Syndicate shall have the following powers, namely :-
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> (8) to prescribe the conditions for affiliating colleges to the University and to withdraw affiliation from colleges;
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> * * * * * * *
>
> (16) to prescribe the fees to be charged for the approval and affiliation of colleges, for admission to the examinations, degrees, titles and diplomas of the University, for the registration of graduates, for the renewal of such registration and for all or any of the purposes specified in section 4;
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> * * * * * * *
>
> (34) to arrange for and direct, the inspection of all University colleges, affiliated and approved colleges and hostels;
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> * * * * * * *
>
> (50) (a) to delegate any of its powers to the Vice-Chancellor, to a committee from among its own members or to a committee appointed in accordance with the Statutes.

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(b) The Syndicate may consult the Standing Committee on Academic Affairs in respect of any academic matter, where it considers such consultation is necessary."

13. Chapter XVIII of the Statute deals with "Affiliation, Approval to colleges and Autonomous colleges", including procedure to be adopted in granting affiliation or approval. While a college is to apply for affiliation or approval under Rule 21 of the Statute, it is required to give certain information and undertaking under clause (h) of Rule 21 and to undertake that no capitation fee will be charged, as evident from the said provision and quoted hereunder :-

"21. A college applying for affiliation or approval shall send a formal letter of application to the Registrar between the 1st July and 31st October preceding the academic year in which the courses are proposed to be started and shall give full information in the letter of application on the following matters :-

* * * * * * * *

(h) An undertaking that no capitation fee or donations of any will be collected from students/parents guardians anyone else in consideration of admission."

14. Under Section 24 (a) (8) of the Act, 1990, while the University is invested with power to withdraw affiliation from colleges in appropriate cases, Rule 3 of Statute (Chapter XVIII) prescribes the procedure to withdraw or suspend affiliation. The said provision, i.e., Rule 3 reads as follows :-

"3. The Syndicate shall have the power at any time after due enquiry, to withdraw or suspend the affiliation or approval granted to a college: provided the Syndicate shall inform the management of college concerned of its findings after the enquiry and shall allow it an opportunity of making such representation as it may deem fit. The report of the enquiry the representation made by the Management, if any, and thereon shall be placed before Standing Committee on Academic Affairs along with the recommendation of the Syndicate. The Syndicate shall carry out the decision of the Standing Committee on Academic Affairs on the recommendation. The decision of the Syndicate is final."

15. From the provisions as noticed and discussed above, it is evident that for affiliation of a college, an undertaking is to be given by the college that no capitation fee or donation will be collected from any student/parents or guardian. In respect of an affiliated college, which is already affiliated with one University (Madras University or Madurai Kamraj University), when such college is curbed out and made a deemed affiliated college of Manonmaniam Sundaranar University, in such case the college will be deemed to have given undertaking that it will not charge any capitation fee or donation from the student/parents or their guardian at any time.

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16. It will be evident from sub-clause (34) of clause (a) of Section 24 of the Act, 1990 that the Syndicate could investigate any of its college, including affiliated college or its University, such power could be delegated to a Committee under sub-clause (50) of clause (a) of Section 24 of the Act. For withdrawal of affiliation, it is mandatory to hold such enquiry after informing the management of the college and order of withdrawal of affiliation can be passed by giving opportunity to the college to file representation. This will be evident from Rule 3 (Chapter XVIII) of the Statute. Thus, the Syndicate of the University is not only empowered to inquire into any allegation of its college, affiliated college or hostel by itself or through a Committee, it is mandatory to do so before withdrawal of affiliation, if University intends to do so.

17. We, therefore, find no illegality in the decision taken by the Syndicate of the University to constitute a Committee to inquire into the allegations relating to charging of capitation fee and the report of such three member committee dated 13th Aug., 1993 cannot be held to be without jurisdiction merely because 'Committee' has been addressed as a 'Commission'. If the Syndicate is invested with such power, giving a wrong nomenclature of the Committee will not ipso facto render the report of such Committee as void or without jurisdiction.

18. So far as the action under the Capitation Fee Act, 1992 is concerned, the University has not taken any decision under the Act nor passed any order. The resolution dated 25th Oct., 1993 is a mere suggestion/recommendation to the State Government to take action in accordance with law, which is always open, not only to the University, but to any aggrieved person, including student(s)/parents or their guardian, who can bring the illegality to the notice of the competent authority of the State Government and may request to inquire into the mater and pass order in accordance with law.

19. From the documents enclosed with the typed set, where reference to the resolution dated 25th Oct., 1993 has been made, it has been noticed that the Syndicate in its subsequent meeting held on 15th Dec., 1993 resolved not to consider the application received from six colleges, including the respondent/writ petitioner for further affiliation of the course for the year 1994-95. Such subsequent decision dated 15th Dec., 1993 having not been challenged, the college in question cannot derive any advantage, if a recommendation to take action in accordance with law is set aside or if it is not acted upon.

20. The case of Arumugam (supra) decided by a learned single Judge of this Court is not applicable in the present case, as there is no corresponding provision has been made under the Madurai Kamaraj University Act prohibiting its affiliated colleges from taking capitation fee. Those colleges, for the purpose of capitation fee, will be guided by the Capitation Fee Act, 1992. On the other hand, the college in question and other colleges under the control of the Manonmaniam Sundaranr University, will not only be guided by the prohibition imposed under the Capitation Fee Act, 1992, but also in view of the undertaking given under Rule 2 (h) of the Statute in question.

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21. Further, as no person can be prohibited from lodging any complaint before a court of law or from lodging FIR in a police station, it is not open to the Court to preempt any action, if one or other authority or persons request the competent authority to lodge FIR.

22. In view of the reasons given in the foregoing provisions, we cannot subscribe to the finding dated 17th July, 2002, given by the learned single Judge in W.P. No.7378/95 and, accordingly, the said judgment is set aside.

23. It is open to the University to proceed in the matter and to take appropriate action in accordance with the Acts and Statute after giving opportunity to the affected party and it may also pursue the State to act as per its recommendation made pursuant to Resolution dated 25th Oct., 1993 and report dated 13th Aug., 1993. The competent authority of the State of Tamil Nadu will apply its mind independently before coming to a definite conclusion in the matter. The writ appeal is allowed, but there shall be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

GLN

To
1. The Secretary to Government
Education Department
Fort St. George, Chennai.

2. The Registrar
Manonmaniam Sundaranar University
Tirunelveli.

3. The Commissioner of Collegiate Education,
College Road, Madras 6.

+ 1 CC To Mr. Ravi Chandra Babu, Advocate SR NO.23997

+ 1 CC to the Government Pleader SR NO 24531

+ 1 CC To M/S.Row and Reddy, Advocate SR NO.24473

W.A. NO. 3090 OF 2002

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